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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8163 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

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DHIRAJLAL VANMALIDAS GHIA & ORS.

Versus

COMPETENT AUTHORITY AND DY. COLLECTOR (ULC),  
RAJKOT & ANR.

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Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for the  
Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 07/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 11th December 1984 under sec. 21(2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in

appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 21st April 1988 in Appeal No. Rajkot-6 of 1985 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No.1 cancelled the permission granted under sec. 21(1) of the Act by the order passed on 30th October 1979 with respect to four parcels of land bearing survey Nos. 404, 405, 406 and 407 in all admeasuring 23978 square meters situated at Rajkot within the urban agglomeration of Rajkot (the disputed lands for convenience).

2. The facts giving rise to this petition move in a narrow compass. The petitioners appear to have applied for permission under sec. 21(1) of the Act with respect to the disputed lands. By the order passed by respondent No.1 on 30th October 1979, such permission came to be granted on certain terms and conditions. Its copy is at Annexure A to this petition. One condition required the petitioner to start construction activity on the disputed lands within one year from the date of the order at Annexure A to this petition. Another condition required the petitioners to complete the construction work in all respects within 5 years from that date. The petitioners were thus required to complete the construction work on or before 30th October 1984. It appears that the petitioners could not start the construction activity in the disputed lands within one year from the date of the order at Annexure A to this petition. Thereupon a show-cause notice came to be issued by respondent No. 1 on 8th July 1981 calling upon them to show cause why the permission granted by the order at Annexure A to this petition should not be cancelled under sec. 21(2) of the Act. It appears that the aforesaid show-cause notice came to be withdrawn by the order passed by respondent No. 1 on 24th June 1983 presumably on assurance that the construction work would be over within the stipulated time-limit. It appears that the construction work could not be completed within the stipulated time-limit of 5 years from the date of the order at Annexure A to this petition. Thereupon a show-cause notice came to be issued on 30th October 1984 calling upon the petitioners to show cause why the permission granted by the order at Annexure A to this petition should not be withdrawn. The petitioners appear to have filed their reply thereto. After hearing the petitioners, by the order passed on 11th December 1984 under sec. 21(2) of the Act, respondent No. 1 cancelled the permission granted by the order at Annexure A to this petition. A copy of the aforesaid order passed on 11th December 1984 under sec. 21(2) of the Act is at Annexure B to this petition. The

aggrieved petitioners carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-6 of 1985. By the order passed on 21st April 1988 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure C to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure C to this petition.

3. It transpires from the material on record that 4 dwelling units have been completed and so far as other dwelling units were concerned, construction only up to the plinth level was made and foundation pits were dug with respect to four dwelling units. It was the case of the petitioners before the lower authorities that they could not complete construction work on account of shortage of cement and water in Rajkot at the relevant time. Learned Advocate Shri Nanavaty for the petitioners has urged that they could not carry on any construction activity from the date of the show-cause notice issued on 8th July 1981 till it was revoked by the order passed on 24th June 1983. It has been urged that absence of construction activity during the aforesaid period of 2 years was not on unjustifiable grounds as the petitioners could not have undertaken construction as they were not sure of the outcome of the show-cause notice under sec. 21(2) of the Act. I think Shri Nanavaty for the petitioners is right in his submissions and non-completion of the construction work within the stipulated time-limit of 5 years keeping in mind the aforesaid period of 2 years intervening between issue of the show-cause notice and its revocation was not absolutely on unjustifiable grounds.

4. In this connection, a reference deserves to be made to the ruling of this Court in the case of Givndlal Chunilal Dalvadi v. State of Gujarat and others reported in 1994(1) Gujarat Current Decisions 526 and in the case of Suvarnaben, wd/o Thakorlal Gordhandas and another v. The Competent Authority and Additional Collector (ULC) and another reported in AIR 1996 Gujarat 13. The delay in completion of the scheme if not found on unjustifiable grounds can be condoned by imposition of a suitable penalty on the petitioners. The aforesaid rulings of this Court will be applicable in the present case.

5. The question would then arise as to what penalty should be imposed on the petitioners. It transpires from

the order at Annexure A to this petition that the petitioners were required to construct 118 dwelling units of not exceeding 40 square meters in the plinth area. The petitioners should be saddled with the fine liability to the tune of Rs. 2500/- per dwelling unit. The total penalty would therefore come to Rs. 2,95,000/-. The petitioners should be directed to pay the penalty in the sum of Rs. 2,95,000/- within 2 months from today as a condition precedent for condonation of delay in completion of the scheme. The petitioners also deserve to be directed to complete the scheme within 2 years from the date of payment of the penalty amount.

6. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 11th December 1984 under sec. 21(2) of the Act at Annexure B to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 21st April 1988 in Appeal No. Rajkot-6 of 1985 at Annexure C to this petition is quashed and set aside on condition of payment by the petitioners of the fine amount in the sum of Rs. 2,95,000/- within two months from today by means of an account payee cheque to be drawn in favour of the Competent Authority at Rajkot. The petitioner shall undertake and complete the construction of the scheme in all respects within two years from the date of payment of such fine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

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